

**IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER**

IN THE MATTER OF:

TC TILING & EXCAVATING, INC.

Henry County, Iowa

ADMINISTRATIVE CONSENT ORDER
NO. 2010-AQ-29

TO: TC Tiling & Excavating, Inc.
Tracy Roth, Registered Agent
1351 Highway 78
Wayland, Iowa 52654

I. SUMMARY

This administrative consent order is entered into between the Iowa Department of Natural Resources (DNR) and TC Tiling & Excavating, Inc. (TC Tiling) for the purpose of resolving the asbestos NESHAP violations which occurred before the demolition of a commercial building in Wayland, Iowa. In the interest of avoiding litigation, the parties have agreed to the provisions below.

Any questions regarding this administrative consent order should be directed to:

Relating to Technical Requirements:

Bert Noll, Field Office 6
Department of Natural Resources
1023 W. Madison
Washington, Iowa 52353-1623
(319) 653-2135

Relating to Legal Requirements:

Kelli Book, Attorney
Department of Natural Resources
7900 Hickman Road, Suite 1
Windsor Heights, Iowa 50324
(515) 281-8563

Payment of Penalty to:

Department of Natural Resources
Wallace State Office Building
502 East Ninth Street
Des Moines, Iowa 50319-0034

II. JURISDICTION

This order is issued pursuant to the provisions of Iowa Code sections 455B.134(9) and 455B.138(1) which authorize the Director to issue any order

IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER
ISSUED TO: TC TILING & EXCAVATING, INC.

necessary to secure compliance with or prevent a violation of Iowa Code chapter 455B, Division II (air quality), and the rules promulgated or permits issued pursuant to that part; and Iowa Code section 455B.109 and 567 Iowa Administrative Code (IAC) chapter 10, which authorize the Director to assess administrative penalties.

III. STATEMENT OF FACTS

1. Peoples Savings Bank owned a commercial brick building located at 118 W. Main Street in Wayland, Iowa. Peoples Savings Bank hired TC Tiling to demolish the building.

2. On March 3, 2010, DNR Field Office 6 received a complaint alleging that a building was being demolished. The complainant was concerned as to if an asbestos inspection had occurred prior to the demolition.

3. On March 5, 2010, Kurt Levetzow, DNR Field Office 6 environmental specialist senior, and Bert Noll, DNR Field Office 6 environmental specialist, investigated the complaint. Upon arrival at the site, the field office personnel noted that an old brick building had been demolished and most of the debris had been taken away. The field office personnel spoke to Tracy Roth with TC Tiling who stated that his company had been hired to demolish the building. He stated Peoples Savings Bank was the owner of the building. The field office personnel asked if the building had been inspected for asbestos prior to the demolition. Mr. Roth stated it had not and he was not familiar with the asbestos requirements. The field office personnel explained the asbestos regulations to Mr. Roth and informed him a Notice of Violation letter would be issued. Following this conversation, the field office personnel met with Russell Wagler with Peoples Savings Bank. Mr. Wagler stated that he was unaware of the asbestos regulations and confirmed that an asbestos inspection had not been conducted prior to the demolition. The field office personnel explained the asbestos regulations to Mr. Wagler and informed him a Notice of Violation letter would be issued.

4. On April 7, 2010, DNR issued a Notice of Violation letter to TC Tiling for the asbestos violations discovered by field office personnel. The letter informed the company that the matter was being referred for further enforcement. A Notice of Violation letter was also issued to Peoples Savings Bank as the owner for the same violations.

5. On December 3, 2007, TC Tiling was issued a previous Notice of Violation letter for the open burning of shop rags and plastic tiling scraps at its facility in Wayland, Iowa.

IV. CONCLUSIONS OF LAW

1. Iowa Code section 455B.133 provides that the Environmental Protection Commission (Commission) shall establish rules governing the quality of

IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER
ISSUED TO: TC TILING & EXCAVATING, INC.

air and emission standards. The Commission has adopted 567 IAC chapters 20-35 relating to air quality. Pursuant to Iowa Code section 455B.133, 567 IAC 23.1(3) was established, which adopts by reference the federal regulations regarding asbestos removal. The United States Environmental Protection Agency has delegated to the State of Iowa the authority to implement and enforce the demolition and renovation portions of the asbestos NESHAP, found at 40 CFR 61, subpart M.

2. 40 CFR 61.145(a) specifies that the owner or operator of a demolition or renovation activity shall thoroughly inspect a regulated facility for the presence of asbestos prior to commencement of demolition or renovation. The facts in this case indicate no testing was performed prior to the demolition of the building. The above facts demonstrate noncompliance with this provision.

3. 40 CFR 61.145(b) states that the owner or operator of a demolition or renovation shall submit a complete and timely notification prior to the commencement of the demolition or renovation. The specific requirements for notification are contained in the subsection. Proper and timely notification was not given by TC Tiling prior to the demolition of the building. The above facts demonstrate noncompliance with this provision.

V. ORDER

THEREFORE, DNR orders and TC Tiling agrees to do the following:

1. TC Tiling shall pay a penalty of \$3,000.00 within 30 days from the date the Director signs this administrative consent order.

VI. PENALTY

Iowa Code section 455B.146 authorizes the assessment of civil penalties of up to \$10,000.00 per day of violation for the air quality violations involved in this matter. More serious criminal sanctions are also available pursuant to Iowa Code section 455B.146A.

Iowa Code section 455B.109 authorizes the Commission to establish by rule a schedule of civil penalties up to \$10,000.00 that may be assessed administratively. The Commission has adopted this schedule with procedures and criteria for assessment of penalties at 567 IAC chapter 10. Pursuant to this rule, DNR has determined that the most effective and efficient means of addressing the above-cited violations is the issuance of an order with an administrative penalty of \$3,000.00. The administrative penalty assessed by this order is determined as follows:

Economic Benefit – 567 IAC chapter 10 requires that the DNR consider the costs saved or likely to be saved by noncompliance. 567 IAC 10.2(1) states that “where the violator received an economic benefit through the violation or by not taking timely compliance or corrective measures, the department shall take

IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER
ISSUED TO: TC TILING & EXCAVATING, INC.

enforcement action which includes penalties which at least offset the economic benefit." 567 IAC 10.2(1) further states, "reasonable estimates of economic benefit should be made where clear data are not available. TC Tiling was able to avoid the cost of an asbestos inspection and saved time by not notifying the DNR of the demolition. The estimated cost of an inspection that TC Tiling avoided is \$500.00 and that amount is assessed for this factor.

Gravity of the Violation – One of the factors to be considered in determining the gravity of a violation is the amount of penalty authorized by the Iowa Code for that type of violation. As indicated above, substantial civil penalties are authorized by statute. Despite the high penalties authorized, the DNR has decided to handle the violations administratively at this time, as the most equitable and efficient means of resolving the matter. Asbestos is known to cause cancer and is a hazardous air pollutant. Failure to inspect for asbestos and notify prior to demolition has caused possible asbestos fibers to be released into the air through the demolition of the building. Failure to notify prior to demolition also made it impossible for the DNR to inspect the building prior to demolition to ensure that if any asbestos had been in the building that it was properly removed prior to the demolition. These violations threaten the integrity of the regulatory program because compliance with the asbestos regulations is required of all persons in this state. Based on the above considerations, \$1,250.00 assessed for this factor.

Culpability – The asbestos regulations have been in place for at least 20 years. TC Tiling has a duty to remain knowledgeable of the DNR's requirements and to be alert to the probability that it is subject to DNR's rules. Additionally, TC Tiling has been issued a previous Notice of Violation letter for other environmental regulations. Therefore, \$1,250.00 is assessed for this factor.

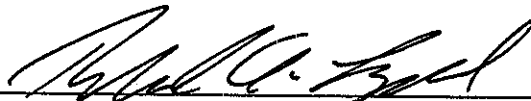
VII. WAIVER OF APPEAL RIGHTS

This administrative consent order is entered into knowingly and with the consent of TC Tiling. For that reason, TC Tiling waives the right to appeal this order or any part thereof.

VIII. NONCOMPLIANCE

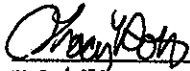
Compliance with Section V of this order constitutes full satisfaction of all requirements pertaining to the specific violations described in this order. Failure to comply with this order may result in the imposition of further administrative penalties or referral to the Attorney General to obtain injunctive relief and civil penalties pursuant to Iowa Code section 455B.146.

IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER
ISSUED TO: TC TILING & EXCAVATING, INC.



RICHARD A. LEOPOLD, DIRECTOR
Iowa Department of Natural Resources

Dated this 13 day of
June, 2010.



TC Tiling & Excavating, Inc.

Dated this 7th day of
June, 2010.

Con 10-6 Henry County (through Barb Stock); Kelli Book; DNR Field Office 6; EPA;
VII.C.4